

SENATE BILL 2168

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 13 and Title 67, Chapter 5, Part 2, relative
to charter schools.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-13-104, is amended by deleting subdivision (14) and adding the following as new subdivisions:

() "Replication" means the creation of one (1) or more subsequent charter schools that utilize the same academic focus of an existing charter school operated by a sponsor or governing board;

() "Underutilized or vacant property" means an entire property or portion thereof, with or without improvements, in which more than fifty percent (50%) of a building located on the property is not being used for direct academic instruction for any grade pre-kindergarten through twelve (pre-K-12), including, but not limited to, spaces suitable for classroom use that are currently being used for storage of any kind;

SECTION 2. Tennessee Code Annotated, Section 49-13-106, is amended by deleting subsection (i) and substituting:

(i) If a sponsor seeks to establish a new public charter school, then the sponsor must apply to the local board of education or to the commission pursuant to § 49-13-108(h).

SECTION 3. Tennessee Code Annotated, Section 49-13-107(b), is amended by deleting the language "developed by the department" and substituting "developed by the department, in coordination with the Tennessee public charter school commission,".

SECTION 4. Tennessee Code Annotated, Section 49-13-108(b)(2), is amended by deleting the language "ninety (90) days" and substituting "seventy-five (75) days"; and by deleting the language "ninety-day" and substituting "seventy-five-day".

SECTION 5. Tennessee Code Annotated, Section 49-13-108(b)(3), is amended by deleting the language "sixty (60) days" wherever it appears in the subdivision and substituting "forty-five (45) days".

SECTION 6. Tennessee Code Annotated, Section 49-13-108(b), is amended by deleting subdivisions (4) and (5) and substituting:

(4)

(A) A sponsor may appeal a local board of education's decision to deny a public charter school application to the commission no later than ten (10) days after the date of the local board of education's decision. The appeal and review process must be conducted in accordance with this subdivision (b)(4).

(B)

(i) After receiving a notice of appeal, the commission or the commission's designee shall:

(a) Hold an open meeting in the LEA in which the proposed public charter school submitted the public charter school application. The meeting must be open to representatives from the local board of education and the sponsor. Notice of the meeting must be provided to the local board of education, the sponsor, and the general public. At least one (1) week before the meeting, notice of the meeting must be:

(1) Published in a newspaper of general circulation in the county where the LEA is located; and

(2) Posted on the commission's website; and

(b) Conduct a de novo on the record review of the proposed public charter school's application.

(ii) The commission or the commission's designee may request that the applicant provide additional information for use in a review conducted under subdivision (b)(4)(B)(i)(b) within fourteen (14) calendar days after receipt of the appeal. An applicant has ten (10) calendar days after receipt of the request to provide the requested information.

(C) The commission shall either approve or deny a public charter school application no later than seventy-five (75) days from the commission's receipt of the notice of appeal.

(D) The commission shall review applications on appeal in accordance with the state board of education's quality public charter school authorizing standards. Except as provided in subsection (c), if the commission finds that the application meets or exceeds the metrics outlined in the department of education's application-scoring rubric and that approval of the application is in the best interests of the students, LEA, or community, then the commission may approve the public charter school's application. The commission's decision is final and is not subject to appeal. If the commission approves an application, then the commission is the authorizer and the LEA for that public charter school. The commission may require schools authorized by the commission under this section to delay opening up to one (1) academic year through the charter agreement.

(E) Notwithstanding subdivision (b)(4)(D), a public charter school authorized by the commission, and the local board of education of the LEA in

which the public charter school is located, may, within thirty (30) calendar days of the public charter school's authorization, mutually agree in writing that the local board of education is the authorizer and the LEA for the public charter school, and the local board of education shall assume the rights and responsibilities of the charter agreement. The charter agreement must be filed with the commission in a manner prescribed by the commission. This subdivision (b)(4)(E) also applies to a public charter school that has had its charter agreement renewed on appeal by the commission.

(F)

(i) For accountability purposes under § 49-1-602, the performance of a public charter school authorized by the commission is not attributable to the LEA in which the public charter school is geographically located.

(ii) Notwithstanding subdivision (b)(4)(F)(i), if a public charter school authorized by the commission, and the LEA in which the public charter school is geographically located, mutually agree that the local board of education is the authorizer and the LEA for the public charter school pursuant to subdivision (b)(4)(E), then for accountability purposes under § 49-1-602, the public charter school's performance is attributable to the LEA.

SECTION 7. Tennessee Code Annotated, Section 49-13-108, is amended by adding the following as new subsections:

(h) If a local board of education's decision to deny a new public charter school application is overturned by the commission three (3) times, beginning on January 1, 2022, within a three-year period, then a sponsor seeking to open a public charter school

in that local school district may apply to the local board of education or directly to the commission. If a sponsor chooses to apply directly to the commission, then the application process must be in accordance with § 49-13-107 and the following:

(1) The commission shall rule by resolution, at a regular or specially called meeting, to approve or deny a public charter school application no later than seventy-five (75) days after the commission's receipt of the completed application. If the commission fails to approve or deny a public charter school application within the seventy-five-day time period prescribed in this subdivision (h)(1), then the public charter school application is deemed approved;

(2) The grounds upon which the commission based a decision to deny a public charter school application must be stated in writing and must specify objective reasons for the denial. Upon receipt of the grounds for denial, the sponsor has thirty (30) days from receipt to submit an amended application to correct the deficiencies. The commission has forty-five (45) days from receipt of an amended application to deny or to approve the amended application. If the commission fails to approve or deny the amended application within forty-five (45) days, then the amended application is deemed approved;

(3) The commission's decision is final and is not subject to appeal; and

(4) If the commission approves an application, then the commission is the authorizer and the LEA for that public charter school.

(i)

(1) A public institution of higher education in this state seeking to open a public charter school or to convert a public school to a public charter school may apply to the local board of education or directly to the commission. If a public institution of higher education in this state chooses to apply directly to the

commission, then the application process must be in accordance with § 49-13-107 and subsection (h).

(2) Notwithstanding § 49-13-113(d)(5), a public charter school sponsored by a public institution of higher education may give an enrollment preference to children of a public charter school's employees, or member of the governing body.

SECTION 8. Tennessee Code Annotated, Title 49, Chapter 13, Part 1, is amended by adding the following as a new section:

(a)

(1) A governing body that has at least one (1) public charter school authorized by the commission that has been in operation for at least one (1) full school year may apply for replication directly to the commission.

(2) If a sponsor for replication chooses to apply directly to the commission, the application process must be in accordance with § 49-13-107 and the following:

(A) The commission shall rule by resolution, at a regular or specially called meeting, to approve or deny a replication application no later than seventy-five (75) days after the commission's receipt of the completed application. If the commission fails to approve or deny a replication application within the seventy-five-day time period prescribed in this subdivision (a)(2)(A), then the replication application is deemed approved;

(B) The grounds upon which the commission based a decision to deny a replication application must be stated in writing and must specify objective reasons for the denial. Upon receipt of the grounds for denial,

the sponsor has thirty (30) days from receipt to submit an amended application to correct the deficiencies. The commission has forty-five (45) days from receipt of an amended application to deny or to approve the amended application. If the commission fails to approve or deny the amended application within forty-five (45) days, then the amended application is deemed approved;

(C) The commission's decision is final and is not subject to appeal; and

(D) If the commission approves an application, then the commission is the authorizer and the LEA for that public charter school.

(3) This section does not prohibit a governing board from applying for replication to the local board of education through the regular application process outlined in § 49-13-108.

(b)

(1) A governing body that has at least one (1) public charter school authorized by the commission and at least one (1) public charter school authorized by a local board of education may apply to either the commission or the local board of education to transfer all of the governing body's public charter schools to the jurisdiction of one (1) authorizer. The department of education shall develop a transfer application form.

(2) The state board of education shall promulgate rules for the transfer application process. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) The decision concerning a transfer application made by the local board of education or the commission is final and not subject to appeal. If a

transfer application is denied, the public charter school remains under the jurisdiction of the existing authorizer.

(4) If the commission or local board of education approves a transfer application then:

(A) The commission or local board of education, as applicable, becomes the authorizer and the LEA for all public charter schools operated by the governing board, and assumes the rights and responsibilities of each charter agreement with a term not to exceed the term of the initial charter agreement; and

(B) The charter school shall enter into a new charter agreement with the commission or local board of education that has become the authorizer. The terms of the new charter agreement must not exceed the term of the charter agreement that was in effect at the time that the transfer was approved. Upon expiration of the new charter agreement, the charter school may apply to the commission or local board of education that has become the authorizer to renew the charter agreement.

SECTION 9. Tennessee Code Annotated, Section 49-13-135, is amended by deleting the language "and costs".

SECTION 10. Tennessee Code Annotated, Section 49-13-136, is amended by deleting subsections (c) and (d) and substituting instead:

(c)

(1) No later than October 1 each year, an LEA in which one (1) or more charter schools operates shall catalog each year all underutilized or vacant properties owned or operated by the LEA and all underutilized or vacant

properties within any educational facility owned or operated by the LEA. The LEA shall submit a comprehensive listing of all underutilized or vacant properties to the department of education and the comptroller of the treasury. The department shall make an LEA's list available to any charter school operating in the LEA or to any sponsor seeking to establish a public charter school in the LEA.

(2) A public charter school may petition the comptroller of the treasury for an audit of the listing of underutilized or vacant properties submitted by the LEA in which the public charter school is, or will be, geographically located. The comptroller of the treasury is authorized to promulgate rules, in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, for the administration of this subdivision (c)(2).

(3) A public charter school operating in the LEA has a right of first refusal to lease for no cost or purchase for one dollar (\$1.00) any underutilized or vacant property submitted by the LEA under this section. A lease agreement executed between a public charter school and an LEA must not reflect any outstanding bonded debt on the underutilized or vacant property, except as agreed upon to reflect any necessary costs associated with the occupation or remodeling of the facility.

(4) Upon the execution of a lease agreement pursuant to this section, a public charter school has unrestricted use of the property at no charge, except that the public charter school shall provide for routine maintenance and repair so that the leased property is maintained in as good order as when the lease was executed. The public charter school is responsible for paying all utilities in use at the leased property. The LEA is responsible for any extensive repairs to the

leased property that are considered capital expenses in excess of fifty thousand dollars (\$50,000). Any fixtures, improvements, or tangible assets added to leased property by the public charter school pursuant to this section must remain at the leased property upon the public charter school's return of the leased property to the LEA.

(5) If a school building is sold to a public charter school pursuant to this section and the public charter school subsequently sells or transfers the school building to a third party, the public charter school or related entity must transfer an amount equal to the gain in the property minus the adjusted basis, including the costs of improvements to the school building that the public charter school paid for, to the school district that initially sold the vacant school building to the public charter school. Gain and adjusted basis is determined in the manner prescribed by the Internal Revenue Code and the applicable Internal Revenue Service regulations and guidelines.

SECTION 11. Tennessee Code Annotated, Section 49-13-136, is amended by adding the following as new subsections:

(g) The property tax exemptions in §§ 67-5-203 and 67-5-212 apply to public charter school property, including any facility, or portion thereof, used to house a public charter school.

(h)

(1) The commissioner of education may establish an LEA authorizer facilities grant for the purpose of providing grants to LEAs that provide facilities at no cost to public charter schools. Upon execution of a lease, lease-purchase, or purchase agreement between an LEA and a public charter school, the commissioner may grant an LEA authorizer facilities grant to the LEA. An LEA

shall use an LEA authorizer facilities grant to acquire or improve property that is used to educate students.

(2) Subject to appropriations, an LEA authorizer facilities grant fund is established as a separate account in the state treasury for the purposes of funding LEA authorizer facilities grants. Costs for administering LEA authorizer facilities grants may be funded from the LEA authorizer facilities grant fund. Amounts remaining in the fund at the end of each fiscal year shall not revert to the general fund. Moneys in the LEA charter authorizer facilities grant fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the fund.

SECTION 12. Tennessee Code Annotated, Section 49-13-144(b), is amended by the deleting the language:

Such policies must ensure funds are made available on an equitable basis for the benefit of public charter schools of all sizes, characteristics, geographic locations, and authorizers.

and substituting instead:

Such policies must ensure at least fifty percent (50%) of the funds are made available on a per-pupil basis for the benefit of public charter schools of all sizes, characteristics, geographic locations, and authorizers.

SECTION 13. Tennessee Code Annotated, Title 49, Chapter 13, Part 1, is amended by adding the following as a new section:

(a) There is created a state public charter school debt reserve fund, including a state public charter school interest savings account to be administered by the department of education. All moneys in the fund must be used to enhance the ability of any qualified public charter school that chooses to finance capital construction with

revenues from bonds issued on behalf of the qualified public charter school by the appropriate authority to obtain such financing on favorable terms by providing a source of moneys that can be used to make bond payments if the qualified public charter school fails to make such payments, and the department may make bond payments from the fund for such purposes.

(b) This section does not create any state debt, require the state to make any bond payments on behalf of a public charter school from any source of state moneys other than the state public charter school debt reserve fund, or require the state to fully pay off any outstanding bonds of a public charter school that cannot make scheduled bond payments.

(c) Moneys in the state public charter school debt reserve fund must be invested by the state treasurer pursuant to title 9, chapter 4, part 6 for the sole benefit of the fund.

(d) The state public charter school debt reserve fund is subject to appropriations by the general assembly and gifts, grants, and other donations received by the department of education for the fund or the LEA charter authorizer facilities grants authorized by § 49-13-136(h). Any moneys in the fund must not revert to the general fund at the end of the fiscal year and must be retained in the fund until expended.

SECTION 14. This act is not an appropriation of funds, and funds must not be obligated or expended pursuant to this act unless the funds are specifically appropriated by the general appropriations act.

SECTION 15. This act takes effect July 1, 2022, the public welfare requiring it.